

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 183 CS

Law Enforcement and Correctional Officers

**SPONSOR(S):** Allen

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 656

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Luppert</u>	<u>Everhart</u>
3) <u>Justice Appropriations Committee</u>	<u>7 Y, 0 N</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
4) <u>Justice Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
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### SUMMARY ANALYSIS

HB 183 with committee substitute creates the Deputy James M. Weaver Act. This bill expands the death benefits to the beneficiaries of a law enforcement officer who is accidentally killed while on duty at the scene of a traffic accident to which the officer has responded or while enforcing a traffic law or ordinance

The bill also requires that an internal investigation of a law enforcement or correctional officer to be completed within 180 days. The bill specifies exceptions to this requirement.

Section 943.22, F.S. provides salary incentives for law enforcement officers who have met certain educational standards. The education must be from an accredited college, university or community college. Currently, an accredited college, university or community college is defined to include a college, university, or community college which has been accredited by the Southern Association of Colleges and Schools, another regional accrediting agency, or the Accrediting Council for Independent Colleges and Schools. The bill expands the definition to include colleges, universities or community colleges accredited by an accrediting agency or association that is recognized by the database created and maintained by the United States Department of Education.

This bill appears to have an indeterminate, but minimal, fiscal impact on state and local governments and the private sector.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government –The bill impacts the discretion of a law enforcement or correctional agency who is conducting an investigation of an officer by providing that the investigation must be completed within 180 days. The bill also increases benefits paid to beneficiaries of law enforcement officers who are killed in certain circumstances.

Safeguard individual liberty -The bill requires that an internal investigation of an accused officer be completed within 180 days.

#### B. EFFECT OF PROPOSED CHANGES:

Deputy James Weaver of the Orange County Sheriff's Office was struck by a vehicle while directing traffic at an automobile accident on November 24, 2003. The Deputy died as a result of his injuries the following day.

*Death benefits:* Section 112.19, F.S. provides for death benefits to be paid to beneficiaries of law enforcement, correctional or correctional probation officers<sup>1</sup> as follows:

- The sum of \$50,000 shall be paid when an officer, while engaged in the performance of the officer's duties, is accidentally killed or receives accidental bodily injury which results in the loss of the officer's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. s. 112.19(2)(a), F.S.
- The sum of \$50,000 shall be paid if an officer is accidentally killed and the accidental death occurs as a result of the officer's response to fresh pursuit<sup>2</sup> or to the officer's response to what is reasonably believed to be an emergency. This sum is in addition to the \$50,000 provided for above. s. 112.19(2)(b), F.S.
- The sum of \$150,000<sup>3</sup> shall be paid if an officer, while engaged in the performance of the officer's duties, is unlawfully and intentionally killed or dies as a result of such unlawful and intentional act. s. 112.19(2)(c), F.S.

These benefits are paid by the employer of the officer.<sup>4</sup> Current law requires<sup>5</sup> that certain educational expenses of the spouse or children of an officer be waived at state career centers, community colleges and universities, if the officer is killed under circumstances described in s. 112.19(2)(b) or (c), F.S. – in other words, during fresh pursuit or an emergency or if the officer is unlawfully and intentionally killed.

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<sup>1</sup> s. 112.19(1)(a), F.S.

<sup>2</sup> Fresh pursuit is defined as "the pursuit of a person who has committed or is reasonably suspected of having committed a felony, misdemeanor, traffic infraction or violation of a county or municipal ordinance. The term does not imply instant pursuit, but pursuit without unreasonable delay." s. 112.19(1)(d), F.S.

<sup>3</sup> The amount of death benefits are adjusted to reflect price level changes since the effective date of the act. By rule, the Bureau of Crime Prevention and Training within the Department of Legal Affairs adjusts the statutory amount based on the Consumer Price Index. s. 112.19(2)(j), F.S. In no case shall the amount payable be less than the amount stated in statute. See also, Rule 2A-8.005, F.A.C. which states that statutory amount for the period July 1, 2004 through June 30, 2005 is \$52,375.50 for benefits paid under s. 112.19(2)(a) & (b) (if benefits are paid under paragraph (b) they are added to benefits under paragraph (a) for a total of \$104, 751) and \$157,126.50 for benefits paid under 112.19(2)(c), F.S.

<sup>4</sup> s. 112.19(4), F.S.

<sup>5</sup> s. 112.19(3), F.S.

The law does not provide for the payment of educational expenses if the officer is killed under circumstances described in s. 112.19(2)(a), F.S. – in other words, as a result of an accident.

HB 183 with committee substitute amends s. 112.19(2)(b), F.S. by adding to the category contained in that paragraph, officers who are accidentally killed at the scene of a traffic accident to which the officer has responded or while the officer is enforcing what is reasonably believed to be a traffic law or ordinance. As a result, death benefits for an officer who is killed at the scene of a traffic accident or while enforcing a traffic law or ordinance will be treated in the same manner as death benefits for an officer who is killed during fresh pursuit or during response to an emergency. Beneficiaries of officers who are killed in this manner will be eligible for both the increased monetary benefits and for waiver of educational expenses described above.

*Law Enforcement Officers' Bill of Rights:* Part VI of Chapter 112 is commonly known as the "Law Enforcement Officers' Bill of Rights." Section 112.532, F.S. grants law enforcement officers<sup>6</sup> and correctional officers<sup>7</sup> specific rights when the officer is under investigation by members or his or her agency for any reason which could lead to disciplinary action, demotion or dismissal. The section provides that an officer cannot be dismissed, demoted, transferred, reassigned or otherwise punished unless the officer is notified of the action and the reason for the action. Upon request, an officer who is subject to disciplinary action (suspension with loss of pay, demotion or dismissal) must be provided with a complete copy of the investigative report and supporting documents and with an opportunity to address the findings in the report prior to the imposition of disciplinary action. s. 112.532(4)(b), F.S.

If an agency fails to comply with the provisions of the Law Enforcement Officers' Bill of Rights, an officer who is personally injured by such failure to comply may apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties. s. 112.534, F.S.

Section 112.533, F.S. makes a complaint filed against a law enforcement officer or correctional officer who is employed by an agency, and all information obtained pursuant to the investigation of the complaint, confidential and exempt from public records laws until the investigation ceases to be active or the investigation is otherwise concluded. For purposes of determining whether an investigation is active and the record is therefore confidential and exempt, an investigation is presumed to be inactive if not finding is made within 45 days after the complaint is filed. There is no statutory requirement that an investigation be completed within a set period of time.

HB 183 amends s. 112.532, F.S. to provide that no disciplinary action, demotion, or dismissal shall be undertaken by an agency against an officer for any act, omission, or other allegation of misconduct if the investigation is not completed within 180 days after the date the agency receives notice of the allegation. If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the officer of its intent to proceed with disciplinary action, along with a proposal of the action sought. This notice must be provided within 180 days after the date the agency received notice of the misconduct with certain exceptions:

- The running of the limitations period may be tolled for a time specified by the officer in writing.
- The running of the limitations period shall be tolled during the time that any criminal investigation or prosecution is pending in connection with the misconduct.
- The running of the limitations period shall be tolled if the officer being investigated is incapacitated or otherwise unavailable.

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<sup>6</sup>The term "law enforcement officer" is defined as follows: "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07." s. 112.531(1), F.S.

<sup>7</sup> The term "correctional officer" is defined as follows: "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel." s. 112.531(2), F.S.

- In a multijurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.

The bill also provides that an investigation may be reopened if significant new evidence has been discovered that is likely to affect the outcome of the investigation and the evidence could not have reasonably been discovered in the normal course of the investigation. Any disciplinary action resulting from a reopened investigation must be completed within 90 days after the investigation is reopened.

*Salary incentive program:* Section 943.22, F.S. provides salary incentives for law enforcement officers who have met certain educational standards. The section provides that the education must be from an accredited college, university or community college. Currently, an accredited college, university or community college is defined to include a college, university, or community college which has been accredited by the Southern Association of Colleges and Schools, another regional accrediting agency, or the Accrediting Council for Independent Colleges and Schools. The bill expands the definition to include colleges, universities or community colleges accredited by an accrediting agency or association that is recognized by the database created and maintained by the United States Department of Education.

#### C. SECTION DIRECTORY:

Section 1. Provides that act shall be known by the popular name the "Deputy James M. Weaver Act."

Section 2. Amends s. 112.19, F.S., to expand death benefits for law enforcement officers.

Section 3. Amends s. 112.532, F.S., to provide a limitation period for disciplinary actions.

Section 4. Amends s. 943.22, F.S. to expand definition of accredited college, university or community college for the purpose of salary incentives for full-time officers.

Section 5. Reenacts s. 110.123(4)(e), F.S., to incorporate the amendment to s. 112.19, F.S. by reference

Section 6. Reenacts s. 112.19(3), F.S., as amended by chapter law to incorporate amendment to s. 112.19, F.S. by reference.

Section 7. Reenacts s. 112.19(3), F.S., as amended by chapter law to incorporate amendment to s. 112.19, F.S. by reference.

Section 8. Reenacts s. 250.34, F.S., to incorporate amendment to s. 112.19, F.S. by reference.

Section 9. Reenacts s. 285.18, F.S., to incorporate amendment to s. 112.19, F.S. by reference.

Section 10. Reenacts s. 943.04(2)(d), F.S., to incorporate amendment to s. 112.19, F.S. by reference.

Section 11. Reenacts s. 943.68(2), F.S., to incorporate amendment to s. 112.19, F.S. by reference.

Section 12. Provides effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

2. Expenditures:  
Indeterminate. (see fiscal comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
Indeterminate. (see fiscal comments)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would result in beneficiaries of law enforcement officers killed in the line of duty receiving additional death benefits.

D. FISCAL COMMENTS:

State and local governments would face increased expenditure requirements due to increased death benefits for law enforcement officers. The impact is indeterminate, but according to the National Law Enforcement Officers Memorial Fund, there were 12 officer fatalities in Florida during 2004. (see <http://www.nleomf.com/media/press/2004finalfatalities.htm>)

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill will require local governments to spend funds; however, it is unlikely to exceed the threshold used by the Legislature to determine that the impact is significant unless there is a substantial increase in the number of officers killed in the line of duty in future years.

2. Other:  
None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill provided for increased death benefits in cases where an officer is "accidentally killed at the scene of a traffic accident". The Criminal Justice Committee amended this provision to clarify that it applied to circumstances in which an officer is killed while *responding* to a traffic accident rather than circumstances in which an officer is involved in a traffic accident then dies at the scene of the accident.

The Justice Council adopted an amendment which amended s. 943.22, F.S. to modify the definition of accredited college, university, or community college for the purpose of salary incentives for officers.